

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA,)	
INC., a Georgia Corporation,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	FILE NO. 1:10-CV0082 CAP
CITY OF SANDY SPRINGS, GEORGIA,)	
et al.)	
)	
Defendants.)	

CHURCH OF SCIENTOLOGY OF GEORGIA, INC.'S BRIEF
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Church of Scientology of Georgia, Inc. (the "Church" or the "Church of Scientology") hereby submits its Brief in Support of its Motion for Partial Summary Judgment as follows:

SUMMARY OF CASE

This cause of action arises out of the City of Sandy Springs' denial of the Church of Scientology's rezoning application to use an existing 43,916 square foot office building, which it owns, for its religious activities (the "Application"). Instead, the City approved a rezoning for use of the building as a church, but conditioned the use to 32,053 square feet, which excludes the proposed use of the 11,863 square foot basement for a chapel (the "Chapel"), executive offices and other church related uses (the "Zoning Decision").

The Church's Application exceeded the parking requirement for "Churches and other places of worship" contained in the Sandy Springs Zoning Ordinance (the "Zoning Ordinance"). Nonetheless, the City based its refusal to approve the entire 43,916 square foot for use as a church building, ostensibly due to a lack of sufficient parking for the facility.

The City has never applied a parking requirement, other than the City's own parking ordinance relating to "Churches and other places of worship" to any other church or place of worship. The City's action was contrary to uncontroverted findings of parking studies, submitted by the Church of Scientology at the City's request, which show that the parking proposed by the Church of Scientology, not only greatly exceeds the requirements of the City's Zoning Ordinance, but also exceeds the Church of Scientology's needs, as demonstrated by examinations of the parking needs at other Church of Scientology locations. Moreover, the City's own professional staff (the "Staff") found that with certain conditions, which were acceptable to the Church of Scientology, the proposed parking plan for the converted use of the building met all possible/potential governmental interests, needs and requirements of the City.

I. STATEMENT OF FACTS

The Church of Scientology is a religious organization. Scientology religious services, which are essential to the practice of the Scientology religion, are provided at church facilities.

At the date of filing of this lawsuit, the Church operated in leased space at 4480 North Shallowford Road, Dunwoody, Georgia. The Church subsequently moved its congregation to a new temporary location at 4588 Winters Chapel Road, DeKalb County, Georgia. The Church purchased the property at 5395 Roswell Road, Sandy Springs, Georgia (the "Property") in 2005 to enable it to provide a full range of Scientology religious services and to allow for future growth, which it was unable to accommodate at the Dunwoody location or at its current Winters Chapel Road location. Pending the outcome of the lawsuit, the Church intends to relocate to the building on the Property.

The physical space needs of the Church are dictated by the nature of the Scientology religion and its beliefs and practices. The Scientology religion is based upon the research, writings and recorded lectures of its Founder, L. Ron Hubbard, concerning Scientology, which collectively constitute its Scripture. The Scriptures are the source of the beliefs, practices, rituals and policies of the religion.

The basic tenet of Scientology is that man is an immortal spiritual being, called a "thetan" (from the Greek letter, which symbolizes "thought" or "spirit"). Scientology doctrine states that this spiritual being is inherently good, with potentially infinite capability. However, thetans have lost their spiritual identity and operate at a small fraction of their native ability. Scientologists believe that it is only through an exploration of his or her past that one can overcome the negative experiences that are affecting and reducing his or her inherent spiritual ability. Scientology posits that spiritual renewal and progress can be achieved by participation in Scientology religious practices.

Scientology is a very exact faith. One of its fundamental doctrines is that spiritual freedom can be attained only if the path outlined in the Scripture is followed without deviation. This path starts with the spiritual healing technology found in Dianetics and continues through increasing levels of spiritual enlightenment described throughout the Scientology Scripture. These levels are described in the "Scientology Classification, Gradation and Awareness Chart," and comprise the Bridge to Total Freedom ("The Bridge").

The core religious services of Scientology are "Training" and "Auditing." Training and Auditing are designed to advance one's spiritual existence a step at a time by participation in these practices. Each local Scientology church, such as Plaintiff, must have sufficient facilities to provide the full range of Training and Auditing for each gradient level on the Bridge, except for certain higher levels of spiritual advancement available only at more advanced Scientology churches. Scientology churches also hold congregational services on Sundays, religious holidays, and certain other occasions.

Training is provided through Scientology religious courses at Scientology Churches. Through Scientology Training one obtains the wisdom to understand who he is, what he is, where he comes from and his relationship to the Universe. Mr. Hubbard is very clear in the Scripture that one-half of the spiritual gains in Scientology come from Training.

Most Training courses are divided into Theory and Practical sections. The Theory course room is arranged for study at tables, with audio equipment and with larger tables for demonstrating principles using clay models. The Practical course rooms do not have audio equipment or clay tables, and so have a different arrangement. Some course rooms are set up for training

drills that do not require any tables. For example, a Theory course room for a specific course needs to be next to the Practical course room for that same course and the film room needs to be near all course rooms so that the students can easily see religious instructional films. Many course rooms relate to one another such that as many as five (5) course rooms may be utilized by the students of one (1) class, who migrate from room to room at their own pace during a study period. Thus, not all course rooms will be used at any one (1) time, and all course rooms will certainly not be at full capacity within any one time period.

Scientology Auditing is a unique form of spiritual counseling. Auditing is ministered at Scientology churches in confidential one-on-one sessions between a parishioner and a specially trained individual called an auditor. Auditing must be provided in quiet and confidential surroundings, away from other activities that may be going on in a church. Auditing is supervised by a trained "Case Supervisor," who must first be trained as an auditor. The Case Supervisor's role is to see that the Auditing is ministered in a correct orthodox manner. The standard for an Auditing room is the culmination of many different policy letters of the Founder of the Church of Scientology.

Scientologists believe that the expansion and dissemination of the religion is necessary to salvage human civilization. All Scientology churches have a religious obligation to reach out to their community to spread the word of Scientology so that new members may pursue the path to spiritual enlightenment.

Scientology churches, therefore, are mandated to include large Public Display areas, including audio-visual presentations on the religion and its social betterment campaigns, such as for human rights, drug and alcohol addiction prevention, literacy and scholastic improvement. Scientology churches must meet space requirements to provide Scientology Training courses, Scientology Auditing and case supervision, Scientology dissemination materials and displays, and church administration.

The Church of Scientology International ("CSI"), which is the senior ecclesiastical management body in the Scientology religion, has undertaken considerable study of the necessary facilities for a local Scientology church such as Plaintiff, consistent with Church Scripture. As a result CSI has identified standards of development of spaces and facilities that would be sufficient for a local Church of Scientology.

CSI determined that a minimum of 40,000 square feet is required to provide all the necessary religious services, leaving no step of the Bridge omitted, although the ideal size

is closer to 65,000 square feet. Although one can organize the facilities in a given building in many ways, based on space planning of nearly a hundred Churches of Scientology, a building of less than 40,000 square feet will not provide adequate space for the essential services and activities.

All of the newest Church of Scientology buildings around the world are fully and properly set up to administer all services of Scientology.¹

In accordance with procedures promulgated by CSI, any Class V Church that wishes to purchase a new building must fill out a checklist covering various points, which is submitted to CSI's Building Investment Committee for approval. It is a crucial function of the individuals who approve the purchase of new, prospective Church buildings to consider how the building will be able to be renovated to fit all of the essential religious services and activities in a manner that is pursuant to religious Scripture.

¹ Certain Scientology Churches, designated as Celebrity Centers, do not require the same amount of public displays as other Scientology Churches, and accordingly their space requirements are somewhat less.

The Atlanta Church submitted a checklist for the building located at 5395 Roswell Road, Sandy Springs, Georgia in 2004. Prior to purchasing the Property, the Church confirmed that a church was a permitted use in the Property's O-I zoning designation and that the number of existing surface parking spaces would satisfy the applicable parking regulations, contained in the Zoning Ordinance.

At this time, the Georgia Church of Scientology does not have adequate space to provide the necessary Scientology Training courses, Scientology Auditing and case supervision, Scientology dissemination materials and displays, and church administration. The Property, as currently conditioned to the use of 32,053 square feet, is inadequate to meet the needs of the Church of Scientology. The Property is currently developed with a 43,916 square foot office building. The building has four (4) floors, including an 11,193 square foot basement, which was used for parking by the prior owner. In order to accommodate its growing needs and to provide an adequate facility in which to exercise its religious precepts, the Church developed plans to renovate the existing building on the Property and to convert the 11,193 square foot basement to religious uses, including a 1,218 square foot Chapel, among

other uses. The Church does not propose to operate a day-care center, pre-school, kindergarten, school or boarding house on the premises.

A. The Rezoning Process for the Church of Scientology Application.

Although a church is a permitted use in the City's O-I zoning district under the Zoning Ordinance, the Property's O-I zoning was conditioned on its use for office and accessory uses, thus preventing its use as a church without rezoning to modify and amend the existing zoning. Accordingly, on or about March 9, 2009, the Church submitted the Application, seeking a rezoning and requests for variances to the City, requesting that the City approve use of the entire 43,916 square foot building as a church, including the 11,193 square foot basement area.

The Zoning Ordinance provisions relevant to "Churches and other places of worship" require one (1) parking space for every thirty (30) square feet of floor area in the largest assembly area without fixed seats or one (1) parking space for every 3.5 seats in the largest assembly area with fixed seats. Applying the City's parking requirement to the Church of Scientology, forty-one (41) parking spaces would be required, based on the 1,218 square foot Chapel, which is the largest assembly area proposed. The Property currently has eighty-one (81) parking

spaces (fifty-one (51) spaces on the main site, not counting the parking spaces in the basement, plus a perpetual easement for thirty (30) spaces, located immediately to its east).

In its Staff Report prepared for the June 16, 2009 City Council, hearing, the Staff commented as follows:

Article 18.2.1 indicates parking requirements are to be calculated based upon the proportion that each use contributes to the total. For example, a building with multiple uses would be required to provide parking based upon the total parking requirement associated with each use. On the other hand, parking requirements for uses with large public assembly areas relative to the remainder of the building (i.e. meeting halls or libraries) are based upon the largest assembly area. Normally, (emphasis added) staff would analyze the parking needs for the Church of Scientology building relative to the size of the sanctuary. However, because proposed development will have a sanctuary which comprises less than 5% of the total net floor area, staff has instead analyzed the parking impact using an aggregate of the uses in the building (sanctuary, offices and classrooms).

The Staff then applied a multi-use formula by which it added the total number of spaces required by the Zoning Ordinance for the Chapel, classrooms and Church offices, as if each were a separate and distinct principal use. The Staff also assumed that all course rooms, offices, and the assembly area would be utilized simultaneously at their maximum capacity, contrary to the Church's showing.

In recommending departure from the standard applicable to "Churches and other places of worship" and making its alternative calculations, the Staff ignored the City's own Zoning Ordinance and the fact that all of the uses within the building are church uses. The Staff also commented that the entire 43,916 square foot building could be "recommended for approval by staff if the applicant can demonstrate that the on-site parking will be sufficient to meet the full use of the proposed building including the expansion through either a parking study or shared parking analysis."

The Church sought and obtained a deferral to allow time to provide Staff with a parking study showing the present and future parking needs for the 43,916 square foot building. After discussing the parameters for a parking study with the Staff, the Church commissioned a parking study (the "Parking Study"), prepared by the national engineering firm of Kimley-Horn and

Associates ("Kimley-Horn"). The Parking Study compared the needs of the proposed Sandy Springs Church to a Church of Scientology in Nashville, Tennessee and the existing Church of Scientology in Dunwoody to determine the number of parking spaces actually required to meet the needs of a Church of Scientology.

The chapel of the Nashville Church of Scientology has 1,782 square feet and is, therefore, slightly larger than the proposed Sandy Springs Church of Scientology. Yet, when Kimley-Horn examined the actual need for parking, it found that the peak parking demand for weekdays and weekends at the Nashville site was for 41 spaces. To account for the difference in size of the two (2) churches, Kimley-Horn divided the number of spaces used into the total square footage of the Nashville Church and found actual usage to be a ratio of one (1) space per 927 square feet. At the Dunwoody site, the peak demand was 22 spaces, which equates to a ratio of one (1) space per 522 square feet.

Based on the Nashville parking demand per square foot of building, the Parking Study showed that the maximum number of parking spaces needed for the proposed Sandy Springs Church of Scientology, utilizing the entire 43,916 square foot building for religious uses, would be 52 parking spaces. Before restriping, the Sandy Springs Church has 81 spaces available and

after restriping the Church will have a total of 111 spaces available, which is a surplus of greater than 50% over the anticipated need and almost three (3) times more than required by the Sandy springs Parking Code. A blend of the Nashville and Dunwoody parking space requirements would result in one (1) space per 725 square feet or 60 spaces as applied to the Property.

The Staff revised its estimate of required parking for the Church in its July 16, 2009 report to the Planning Commission upon review of the Kimley-Horn findings. The Staff reasoned that the parking ratio at the Nashville Church was 3.33 spaces per 1,000 square feet (114 parking spaces were available for a 38,000 square foot facility), which was merely a recognition of how many spaces exist at the Nashville church. Staff then concluded that the Church in Sandy Springs should provide 130 parking spaces.

The revised Staff Report made no mention of the findings set forth in the Parking Study that the peak usage of parking spaces at the Nashville Church was only 41 of the 114 available spaces. Nor did the Staff Report recognize that the Nashville Church was not required by the City of Nashville to provide 114 spaces; the 114 spaces simply existed at the site prior to the purchase and conversion of the property for church usage. The

Staff Report thus justified its recommendation that the Church's use be limited to 32,053 square feet on a complete misrepresentation of the parking study at the Nashville Church.

On July 15, 2009, as a result of concerns expressed by Staff that the Nashville church was too new to form a basis for parking needs, Kimley-Horn supplemented the Parking Study with a parking study for a long established Church of Scientology in Buffalo, New York, which found that the Buffalo Church had a peak parking demand of one (1) space per 1,812 square feet of building space. Based on the Buffalo data, Kimley-Horn determined that the proposed Sandy Springs Church would need 29 spaces. The Staff ignored the supplemental information and conclusions found by Kimley-Horn regarding the Buffalo parking ratio.

The Staff introduced a new methodology for calculating parking in its August 18, 2009 report to the Planning Commission. The Staff created a graph that showed the ratios of parking spaces at the proposed Sandy Springs Church (1.87 spaces per 1000 square feet), the Nashville Scientology Church (3 per 1000 square feet) and four (4) other Sandy Springs churches. Based on the higher ratios for other places of worship in Sandy Springs, the Staff concluded that "there would be an inadequate

amount of parking for the proposed 43,246[sic] square feet," again ignoring their own ordinance requirement.

After extended discussions between the Staff, the City Attorney and representatives of the Church, on September 1, 2009, Staff recommended approval of zoning 32,053 square feet of the building for use as a church with conditions. In addition, Staff recommended approval of the Application to allow the Church's use at 43,916 square feet with 81 parking spaces with Alternate Conditions that included, among others, a 283-person occupancy cap.

In its October 6, 2009 report, Staff again recommended approval of both the 32,053 square foot building with conditions and the 43,916 square foot building with the Alternate Conditions, this time with a maximum capacity of 170 persons. With the exception of the Church of Scientology, the City has never calculated parking for a church or place of worship on any basis other than set forth in Section 18.2.1 of the Zoning Ordinance.

According to the Director of Community Development (the "Director"), the Staff's justification for not applying the City's parking ordinance to the Church of Scientology's application is that the number of spaces required under the Code would be insufficient and "creates a public safety issue related

to the site, and that is the public interest that . . . was involved."

B. Favorable Treatment of Other Churches in Sandy Springs

The City has given favorable treatment to other churches in its jurisdiction, while discriminating against the Church of Scientology in the rezoning process. The City has approved the following rezonings, use permits, modifications and variances for churches and other places of worship issued since its formation on December 31, 2005:

a. Rezoning: Second Church of Christ Scientist; Kadampa Meditation Center.

b. Use Permits: Congregation Beth Tefillah; Mt. Vernon Presbyterian School; Holy Spirit Preparatory School; Lutheran Church of the Apostles; St. Andrews Presbyterian Church; Holy Innocent's Episcopal Church and School; Sandy Springs United Methodist Church.

c. Zoning Modification: Mount Vernon Presbyterian School.

d. Variance: Zanaida Islamic Education Center.

In each and every one of these cases, the City analyzed the parking requirements for a church or place of worship under Zoning Ordinance Section 18.2.1 and applied the parking standard of one (1) parking space for every thirty (30) square feet of floor area in the largest assembly area without fixed seats or

one (1) parking space for every 3.5 seats in the largest assembly area with fixed seats.

1. Lutheran Church of the Apostles

On March 17, 2009 the City approved the application of the Lutheran Church of the Apostles (the "Apostles Church") for a use permit allowing an 8,770 square foot addition to its existing 19,552 square foot church. The Apostles Church property consists of 4.68 acres zoned to the R-2 Urban Overlay District and is designated as residential (3 to 5 units per acre) under the Sandy Springs Zoning Ordinance. The use of the Apostles Church property as a church is inconsistent with the City's Future Land Use Plan. The Apostles Church described the seating for the new sanctuary as follows:

The existing building has an approximate footprint of 20,000 square feet. The existing sanctuary will house a congregation of approximately 175 members. The proposed 8,770 square foot Family Life Center will serve various functions and can accommodate 450 removable seats for regular services and special events. The main assembly room can also house athletic, theatric, music and social functions. Additional parking is proposed to provide code compliance 129 spaces for the potential 450 fixed

seats, as these will be in place 95% of the time

(emphasis added).

According to the Director of Planning and Community Development, "fixed seats" are those seats that are:

either affixed to the facility or is difficult to move and where the permanent arrangement remains in place.

And it's not where you move chairs in and out. For example, you wouldn't apply that if you had a gym that doubled as an . . . assembly area because you would be moving chairs in and out and there might be different arrangements at different times and that would be a non-fixed seating kind of arrangement.

Notwithstanding the Director's interpretation of "fixed seats" and disclosure by the Apostles Church that the seats are removable and would be in place less than 100% of the time, the Planning Staff applied Section 18.2.1 of the Zoning Ordinance and calculated the required off-street parking spaces to be 129 spaces, based on one (1) parking space per 3.5 fixed seats in their largest assembly area for a church or other place of worship. If the City had applied the correct calculation for a church or other place of worship without fixed seating, the Apostles Church would have needed 293 on-site parking spaces for its 8,770 square foot sanctuary. As approved, the Apostles

Church is required to provide 129 spaces on-site for the 8,770 square foot sanctuary, its Sunday School classes, church offices, and any other church uses in the existing 19,552 square foot building.

No limitations or restrictions were placed on the use of the Apostles Church offices, classrooms and other accessory uses while the largest place of assembly is in use at the Apostles Church. The Apostles Church may also use the former sanctuary for overflow seating for the largest place of assembly, effectively increasing its size considerably. The Apostles Church was not required to provide parking for its former sanctuary, classrooms, offices or accessory uses over and above the number of parking spaces required, based on the size of its proposed largest place of assembly.

2. Congregation Beth Tefillah

On April 17, 2007 the City of Sandy Springs Council approved a use permit and concurrent variances for Congregation Beth Tefillah (the "Congregation"), which is zoned to the R-2 Single Family Dwelling District. The Congregation proposed to add a 13,600 square foot preschool to its existing 19,036 square foot synagogue. The Staff analyzed the parking requirement under Zoning Ordinance Section 18.2.1, Basic Off-Street Parking Requirements, and determined that 76 spaces would be required